



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of C.R., Police Officer
(S9999U), North Bergen Township

CSC Docket No. 2019-2219

Medical Review Panel

ISSUED: APRIL 17, 2020 (DASV)

C.R., represented by Michael L. Prigoff, Esq., appeals his rejection as a Police Officer candidate by North Bergen Township and its request to remove his name from the eligible list for Police Officer (S9999U) on the basis of psychological unfitness to perform effectively the duties of the position.

The appellant, a non-veteran, was removed from the October 26, 2018 certification of the Police Officer (S9999U), North Bergen Township, eligible list due to psychological reasons. The certification was disposed on February 5, 2019. The appointing authority appointed four eligibles effective January 4, 2019. The appellant pursued an appeal of his removal with the Civil Service Commission (Commission) and presented a psychological evaluation that found him suitable for a Police Officer position. The appeal was then brought before the Medical Review Panel (Panel) on December 13, 2019, which rendered a report and recommendation on December 20, 2019. Exceptions were filed on behalf of the appellant, and cross exceptions were filed on behalf of the appointing authority.

The report by the Panel discusses all submitted evaluations and the information obtained from the meeting. The negative indications related to the appellant's arrests, terminations from employment, motor vehicle infractions, and possible cognitive limitations. Specifically, the appointing authority's evaluator, Dr. Robert Kanen, found the appellant unsuitable for employment as a Police Officer given his "history of significant behavioral problems," including an arrest for rape which resulted in a downgraded charge of "simple assault" to which the appellant pled guilty. It is noted that the incident occurred on October 2, 2009, and the

charge was downgraded to criminal sexual contact in the fourth degree. This charge, as well as the appellant's other charges, were expunged on June 7, 2013. Additionally, Dr. Kanen noted that the appellant's psychological testing revealed that he is defensive, guarded, and lacked insight into himself. Although the appellant exhibited a good work history as a dispatcher with the North Bergen Police Department,¹ Dr. Kanen stated that the appellant was terminated from two previous positions in 2011 and 2015 for tardiness and "lost" another position in security at a hospital after he was arrested in 2009 for being in the stolen vehicle. Furthermore, Dr. Kanen indicated that the appellant reads at a fourth grade level and spells at a sixth grade level. Dr. Kanen also reviewed the appellant's driving history. The appellant had no points currently on his license but had "numerous tickets" from 2005 to 2018.² Therefore, Dr. Kanen concluded that due to the appellant's "history of behavior problems, poor academic skills, poor insight, defensiveness, and guardedness," he was not suitable for a Police Officer position. In contrast, the appellant's evaluator, Dr. Sandra Morrow, found the appellant psychologically fit to perform the duties of a Police Officer. Dr. Morrow stated that the appellant experienced difficulties in his "young adulthood which have cleared up during the past eight years since he married." Moreover, Dr. Morrow found that the appellant appeared to have "at least average" intelligence and scored in "high average" range on a second administration of an intelligence test. Dr. Morrow noted that despite Dr. Kanen's conclusion, the psychological test scores evidenced that the appellant has no clinical pathology and his "job suitability risk probability is low." Therefore, Dr. Morrow recommended the appellant for employment.

During the Panel meeting, the Panel reviewed the concerns noted by the appointing authority's evaluator. It found that the appellant has been working full-time as a dispatcher with the North Bergen Police Department for three years and has not received any discipline. Additionally, the appellant explained that he was terminated at a previous job because he was late on four occasions due to public transportation issues. He also explained that he had worked a double shift in another position and wanted to go home to sleep. He did not have any money for a taxi and decided to drive an automobile that was not his from his place of employment to his home without permission. The appellant admitted that he used poor judgement and was charged with receiving a stolen vehicle. In another incident, he was charged with disorderly conduct when he attempted to break up an altercation between his cousin and two strangers. That charge was dismissed in

¹ Agency records indicate that the appellant's official Civil Service title is Public Safety Telecommunicator. He was first appointed with North Bergen Township as a Public Safety Telecommunicator Trainee effective September 23, 2016.

² The appointing authority's background investigation revealed that the appellant had 16 motor vehicle violations from 2005 to 2018, which included, among other things, infractions for failure to wear a seatbelt, speeding, expired registration, operating a vehicle with an expired registration, failing to notify DMV of an address change, careless driving, failing to observe traffic control devices, and improper display/fictitious plates. The appellant's driver's license was also suspended from November 2010 to February 2011.

court. The Panel also found no cognitive limitations that would make the appellant unsuitable for a Police Officer recruit position.

Of most concern to the Panel was the appellant's rape charge. The appellant explained the circumstances that led to the sexual encounter and denied any force or threat of force at any time. The Panel indicated that, while the appellant's explanation was "not an unreasonable one," it did not have access to an official account of the incident. The Panel also reviewed the appellant's alcohol use, which did not appear problematic. Regarding his financial stability, the Panel noted that the appellant's credit score was low, and he has had financial issues in the past. The Panel, however, did not find a pattern of problematic psychological behavior to preclude the appellant from a Police Officer position. Nonetheless, it could not make a recommendation as to the appellant's suitability for appointment due to his rape charge. It stated that the appellant may be suitable if his description of the events that led to the rape charge were accurate. Therefore, the Panel recommended that, based on the evaluations, the test results of the appellant, his presentation at the meeting, and the job specification for Police Officer, the appellant undergo an independent evaluation to assess his suitability for appointment. The Panel indicated that the Independent Evaluator should be provided with "as much official and original documentation from the arrest and other charges stemming from an allegation of a rape charge that was ultimately changed to a simple assault charge."

It is noted that the parties were given the opportunity to file exceptions and cross exceptions to the Panel's report and recommendation. They were also asked to provide the Commission with the Panel's requested information.

In reply, the appellant submits a certification with the details of the incident that led to the rape charge, emphasizing that the police report reflects solely the complainant's version of the incident. He also presents various documents relating to the incident, including among other things, the Teaneck Police Incident Report, dated October 3, 2009; the complaints and amended accusations, dated October 5, 2009 and March 5, 2010, respectively; a Pre-trial Intervention (PTI) Order of Dismissal, dated March 13, 2012; and an Expungement Order, filed June 7, 2013. However, the appellant takes exception to the Panel's recommendation that he undergo an independent evaluation. He continues to maintain that the sexual encounter was consensual and provides specific details in his certification to support his claim. The appellant also explains that when the matter was in court, his public defender recommended that he participate in PTI with "a reduced charge of sexual contact with an anger management course and restitution" to the complainant. The appellant states that he "reluctantly agreed" and he fully complied with the PTI conditions. He argues that none of the facts are consistent with sexual assault, and he was falsely accused because the complainant wanted to continue their prior

relationship and he did not. Thus, the appellant contends that a third evaluation is not warranted and requests that the Commission grant his appeal.

In its cross exceptions, the appointing authority, represented by Drew D. Krause, Esq., initially indicates that it “takes no position relative to the merits of the pending appeal” but requests an expedited determination as the new Police Officer eligible list will be issued soon and would like to resolve the within matter. In response, the appellant submits that the appointing authority has the burden of proof in this matter and it “takes no position” regarding the merits of his appeal. Therefore, the Commission should grant his appeal. The appointing authority clarifies that it properly disqualified the appellant based on psychological reasons. However, it will comply with the determination as to the appellant’s psychological fitness for a Police Officer position with North Bergen Township.

CONCLUSION

The Commission has reviewed the report and recommendation of the Panel, and having made an independent evaluation of the record, the Commission does not accept the Panel’s recommendation to refer the appellant for independent evaluation. Rather, as set forth fully below, the Commission finds that the record supports removal of the appellant from the Police Officer (S9999U), North Bergen Township, eligible list on the basis of psychological unfitness to perform effectively the duties of the position.

The job specification for Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the knowledge of rules and regulations of the department, the people in the assigned area, traffic laws and ordinances, one’s own limitations in dealing with emergencies, and ways of handling crowd situations. Examples also include the ability to write clear and concise letters, reports, descriptions, or instructions, find general concepts or rules which explain how a given series of individual items are related to each other, apply a broad, general idea, or principle effectively to a particular problem or case, follow rules and procedures, read with reasonable speed and understanding so as to absorb written information, use services and equipment effectively, put up with and handle abuse from a person or group, take the lead or take charge, and take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives and the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and

is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Commission has reviewed the job specification for this title and the duties and abilities encompassed therein and finds that the psychological traits, which were identified and supported by test procedures and the behavioral record, relate adversely to the appellant's ability to effectively perform the duties of the title. Therefore, the Commission finds that the appointing authority has met its burden of proof.

Specifically, it is acknowledged that the appointing authority did not remove the appellant due to an adverse background. However, the Commission is troubled by the appellant's many instances of adverse behavior, which are clearly not qualities suitable for an individual seeking a Police Officer position. In the last 10 years, the appellant has had three arrests, two terminations from employment, what appears to be a resignation due to one of those arrests, and numerous motor vehicle infractions with one as recent as 2018. The appellant was being considered for appointment the same year. There is also a finding that he reads and spells at an elementary grade level. While the Panel requested "official and original documentation" concerning the rape charge, the Commission has no authority to prosecute that matter nor should its Independent Evaluator. As emphasized by the appellant, the police report documents the incident as reported by the complainant. The appellant presents an alternate version of the events that transpired. Therefore, an independent evaluator would not provide a reliable assessment of the appellant's psychological suitability in that regard because of the dramatic differences in the narratives of what may have happened between the appellant and complainant. However, what is fact is that the rape charge was downgraded to criminal sexual contact and the appellant entered into PTI as a result. It has been upheld that PTI and other similar diversionary dispositions are not favorable terminations. *See In the Matter of Clifton Gauthier, Rockaway Township*, 461 *N.J. Super.* 507 (App. Div. 2019), *cert. denied*, *In re Gauthier ___ N.J. ___* (2020). Moreover, because the appellant is seeking a law enforcement position, an expunged record shall not preclude his removal from the subject eligible list. *See N.J.S.A. 11A:4-11 and N.J.A.C. 4A:4-4.7(a)4.*

Furthermore, the appellant does not dispute his terminations from employment nor his other arrests. He explains his tardiness for the terminations and the circumstances surrounding his taking someone else's automobile to his home. However, his lack of judgment in that regard, especially the latter event, cannot be excused. The Commission notes that an adverse employment history or

an arrest record, unsupported by a conviction, may be a basis to remove an eligible from a law enforcement eligible list. *See N.J.S.A. 11A:4-11, N.J.A.C. 4A:4-4.7(a)4, and N.J.A.C. 4A:4-6.1(a)7. See also Tharpe v. City of Newark Police Department, 261 N.J. Super. 401 (App. Div. 1992).*

Moreover, as noted above, the appellant has had many motor vehicle violations with the last infraction in 2018. Such infractions show a pattern of disregard for the motor vehicle laws and rules and questionable judgment on the appellant's part. This adds to an array of unlawful behavior and demonstrates recent unbecoming conduct. It is noted that, in its discretion, the Commission has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See Brendan W. Joy v. City of Bayonne Police Department, Docket No. A-6940-96TE (App. Div. June 19, 1998); In the Matter of Yolanda Colson, Correction Officer Recruit (S9999A), Department of Corrections, Docket No. A-5590-00T3 (App. Div. June 6, 2002); In the Matter of Pedro Rosado v. City of Newark, Docket No. A-4129-01T1 (App. Div. June 6, 2003).* In addition, while there is no finding of recent employment issues as a Public Safety Telecommunicator, the Commission emphasizes that the appellant is seeking a Police Officer position. In that regard, it is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of public employee:

His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . . *See Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also In re Phillips, 117 N.J. 567 (1990).*

Thus, as an applicant for a Police Officer position, the appellant is held to a high standard. Therefore, based on the foregoing, the Commission does not find it necessary to refer the appellant for an independent evaluation. Additionally, neither Dr. Morrow's evaluation nor the exceptions filed herein sufficiently refutes Dr. Kanen's findings that the appellant's "history of behavior problems, poor academic skills, poor insight, defensiveness, and guardedness" disqualifies him for appointment. The preponderance of the appellant's psychological test data and his behavioral record, therefore, supports the conclusion that the appellant is

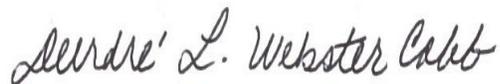
psychologically unsuited for the position of Police Officer. Accordingly, the appellant's appeal is denied.

ORDER

The Civil Service Commission finds that the appointing authority has met its burden of proof that C.R. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be removed from the subject eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF APRIL, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c: C.R.
Michael L. Prigoff, Esq.
Allen Pascual
Drew D. Krause, Esq.
Kelly Glenn
Records Center